

Amendment and Response

Applicant: Timothy R. Ryan et al.

Serial No.: 09/982,299

Filed: October 16, 2001

Docket No.: M190.137.101

Title: ANNULOPLASTY BAND AND METHOD

REMARKS

This Amendment is responsive to the Final Office Action mailed February 11, 2004. In that Office Action, the Examiner rejected claims 10, 11-13, 15, 37-43 under 35 U.S.C. §102(b) as being anticipated by Myers, U.S. Patent No. 5,716,397 ("Myers"). Claims 1-4, 7, 9-13, 15, 16, 30, 33, and 37-43 under 35 U.S.C. §102(b) as being anticipated by Wright et al., U.S. Patent No. 5,306,296 ("Wright"). Claims 5, 6, and 8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wright as applied to claims 1, 4, and 7 in the §102(b) rejection, and further in view of Carpentier et al., U.S. Patent No. 5,061,277 ("Carpentier"). Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wright as applied to claim 1 in the §102(b) rejection, and further in view of Loch et al., U.S. Patent No. 6,174,332 ("Loch"). With this Response, claims 1, 10, 37 have been amended and claims 44 and 45 added. Claims 1-16, 30, 33, and 37-45 remain pending in the application and are presented for reconsideration and allowance.

Amended claim 1 recites the sheath having a perimeter length and the stiffening element having an arc length that is not less than one-half the perimeter length. Support for this language is found, for example, in FIG. 1. In direct contrast, FIG. 2 of Wright clearly shows the framework member 35 having an arc length that is much less than one-half a perimeter length of the tubular member 11. For at least these reasons, the rejection of claim 1 is respectfully traversed.

Newly submitted claim 44 recites that a perimeter shape of the sheath is defined by the stiffening element for at least one-half of a perimeter length of the sheath. Support for this language is found, for example, in FIG. 1. In contrast, while the framework member 35 of Wright may define a perimeter shape of the tubular member 11, this shape-defining attribute exists along only a small portion of the entire perimeter length of the tubular member 11. FIG. 2 of Wright depicts the framework member 35 defining a perimeter shape of the tubular member 11 for approximately one-quarter of the tubular member's 11 entire perimeter length (i.e., the tubular member 11 has a perimeter length measured, for example, starting at the lead line for "12", around the tubular member 11 (e.g., clockwise or counter-clockwise), and back to the lead

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line for "12"; the framework member 35 is clearly less than one-half of this perimeter length).

Thus, it is respectfully submitted that claim 44 recites allowable subject matter.

Newly submitted claim 45 recites the stiffening element having an intermediate section extending between two end eyelets, with a first point being defined at a transition of the intermediate section and the first end eyelet and a second point being defined at a transition of the intermediate section and the second end eyelet. A linear distance between the first and second points is greater than a linear distance between the first end eyelet and the second end eyelet. Support for this language is found, for example, in FIG. 1, whereby the eyelets are linearly closer to one another than are points adjacent each eyelet. In contrast, the eyelets of Wright represent the maximum linear length of the framework member 35, such that the limitations of claim 45 are not met. Thus, it is respectfully submitted that claim 45 recites allowable subject matter.

Claim 10 has been amended to recite that the stiffening element is entirely disposed within the sheath. For at least this reason, the rejection over Myers is respectfully traversed. The Examiner further cites Wright as teaching "Markers 38 are located at the eyelets". Elements 38 and 39 of Wright are stitches (col. 16, lines 4-10). The stitches 38, 39 are continuous about an entire circumference of the tubular body 11 (see, for example, FIG. 1 in which the stitching 39 is formed along the entire circumference). Thus, the continuous stitching 38 are not discrete markings as otherwise required by amended claim 10. Therefore, it is respectfully submitted that amended claim 10 recites allowable subject matter.

Amended claim 37 defines over Myers for at least the reasons described above. With respect to Wright, amended claim 37 requires that the visible marking identify a position of the first eyelet. The continuous stitching 38 of Wright in no way identifies an eyelet position. FIG. 10 of Wright clearly illustrates this fact; it is impossible to discern eyelet position within tubular body via the stitching 38. Therefore, it is respectfully submitted that amended claim 27 recited allowable subject matter.

With respect to claim 30, it is respectfully noted that the Examiner has not cited any language in Wright that teaches a band thickness of no greater than 2.5 mm. While the framework member 35 may have a diameter of .028 inch, the framework member 35 is but one

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component of the overall band, and thus the overall band thickness. Thus, it is respectfully submitted that claim 30 is allowable.

CONCLUSION

It is believe that independent claims 1, 10, 30, 37, 44, and 45, and thus all claims depending there from, are in a condition for allowance. Notice to that effect is respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicants' Representative at the below-listed telephone number if there are any questions regarding this response.

Respectfully submitted,

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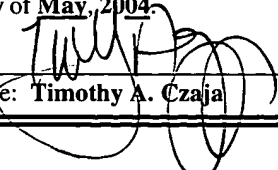
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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 11th day of May, 2004.

By 

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